IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 64 OF 2005

Jimmy Dara Sukhia & Ors. .. Applicants

Vs.

Smt. Dina Dara Sukhia .. Respondent

Ms. Mandira Moitra with Mr. Tejesh Dande and Mr. A.P. Paralikar for applicants.
Mr. C.U. Singh i/by M/s. Wadia Gandhy & Co. for Respondent.

CORAM : B.H. MARLAPALLE, J.

Date : October 05, 2005.

P.C.:

1. Heard the learned counsel for the applicants who are defendants in RCS No.808 of 1997 filed in the Court of Small Causes Judge at Pune. In the said suit an application at Exh.56 came to be filed by the defendants on or about 23/1/2003 under Order VII Rule 11 of CPC. It was contended that the suit was filed for eviction of the defendants stating that the defendants were gratuitous licensees. It was, therefore, prayed to return the plaint as the court concerned have no jurisdiction to try and entertain the suit under Section 26 of the Provincial Small

Cause Courts Act, 1887. The said application came to be rejected by the learned 5th Additional Small Causes Judge at Pune on 2/2/2005 and hence this revision application.

2. The learned counsel for the respondent-plaintiff has referred to the following decisions of this court an submitted that a decree or any order passed in a suit filed under Section 26 of the Provincial Small Cause Courts Act, 1887 is appealable under Section 26-A of the said Act and, therefore, a revision filed under Section 115 of CPC cannot be entertained:-

(a) Urdu Education Society and another vs. Dinshaw Naoraji Printer reported in 1995(2) Bom.C.R. 618.

(b) Mrs. Kutubunisa Begum w/o Mahemood Ur Rahman vs. Mrs. Bilquees Jahan Begum w/o Mohd. Azizuddin Siddiqui reported in 1996(2) Bom.C.R. 324.

3. Having regards to the decisions of this court, as referred to hereinabove, it would be necessary that the defendants invoke the remedy of appeal under

Section 26-A. However, the appeal was required to be filed within 30 days from the date of the order. This revision has been filed on or about 26/4/2005. In the facts of this case, the period of pendency of this revision application need not be taken into consideration for counting the period of limitation for an appeal to be filed under Section 26-A.

4. Hence the Civil Revision Application is disposed as not maintainable in view of the remedy of statutory appeal under Section 26-A of the Provincial Small Cause Courts Act, 1887 and if such an appeal is moved within a period of one week from today, the period of pendency of this revision application i.e. from 26/4/2005 till today shall not be taken into consideration by the Lower Appellate Court.

(B.H. Marlapalle,J.)